

United States District Court
Western District of New York

Charles Gatling

Plaintiff,

-against-

C.O. J. CoGGiola;

C.O. J. Hazzard,

Defendants.

11-CV-0937 (JTM)

Plaintiff's
Affidavit to Amend



On the 5th day of May 2011, at approximately 7 a.m., I was let out of my cell by correctional officer Hazzard, after letting out all other insulin inmates out for insulin, I was the last to be let out, all other inmates had been long since escorted to the hospital clinic.

I was called to the front of the company by C.O. Hazzard. While in the process of exiting the company, approximately eight (8) to (9) nine correctional officers were waiting to, and did act with "deliberate

Indifference" after force was applied by the defendants, they commenced to physically beat, kick, punch, and stomped me about the face, head, back, arms, legs, and midsection of the body, officer Coggiola physically jumped on my knee, and damaged it.

As I was being physically beaten, C.O. Wazzard and Coggiola repeatedly called me "nigger" and after C.O. Coggiola hit me in the head with the cane, he stated "this is what happens to niggers that file grievances" the actions of defendants Coggiola, Wazzard, in using physical force against the plaintiff without need or provocation, or in failing to intervene to prevent the misuse of force, were done maliciously and sadistically and constituted cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. The actions of defendants Coggiola, Wazzard in using physical force against the plaintiff without need or provocation constituted the tort of

29

assault and battery under the law of New York State.

The failure of defendant Bradt to take disciplinary or other action to curb the known pattern of physical abuse of Mr. Gattling by defendants Caggiola, Wazzard constituted deliberate indifference to Mr. Gattling and other prisoners' safety, and contributed to and proximately caused the above-described violation of Eighth Amendment rights and assault and battery.

Wherefore, plaintiff requests that the court grant the following relief: A. Issue a declaratory judgment stating that:

D. The physical abuse of the plaintiff by defendants Caggiola, Wazzard violated the plaintiff's rights under the Eighth Amendment to the United States Constitution and constituted an assault and battery under State law.

B. Award compensatory damages in the following amounts:

1. \$250,000 jointly and severally against defendants

Coggiola, Weyand for the physical and emotional injuries sustained as a result of the plaintiff's beating.

2. \$10,000 jointly and severally Award punitive damages each Coggiola, Weyand

Date 04/09/13

Respectfully Submitted

Charles Lelling

Cayuga Correctional Facility

P.O. Box 1186 Noran, New York 13118

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF CAYUGA) SS:

I, Charles Gatling, being duly sworn, deposes and says that:

I am over eighteen years of age and I am incarcerated at the Cayuga Correctional Facility, P.O. Box 1186, Moravia, New York 13118, and that on the ² April day of 2013, I served a true and accurate copy of the following annexed documents:

³ Motion for Affidavit to Amend a Complaint

by placing such in a sealed envelope, and delivered such to prison officials at the Cayuga Correctional Facility, together with a request for the disbursement of funds to cover postage, to be sent via regular First Class Mailed to the following parties at the following addresses:

⁴ Clerk, of U.S.
District Court United
States Courthouse Buffalo
New York 14202-3350

Eric L. Schneiderman
Attorney General of the State of
New York Benjamin E. Schlegel
Assistant Attorney General

350 Main Street main
place tower Suite 300A
Buffalo New York 14202

Sworn to before me this 9
day of April, 2013.

Deborah M. Devaul
Notary Public State of New York

DEBORAH M. DEVAUL
Notary Public, State of New York
No. 01DE6210850
Qualified in Cayuga County
Commission Expires Sept 8, 2013

Respectfully Submitted,

Charles Gatling 10A0081
(SIGN name above and PRINT name & DIN below)

Charles Gatling 10A0081
Cayuga Correctional Facility
Post Office Box 1186
Moravia, New York 13118